

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

KARLA LEARY,)	CV. NO. 06-00256 JMS-BMK
)	
Plaintiff,)	FINDING AND
)	RECOMMENDATION THAT
vs.)	PLAINTIFF'S CASE BE
)	DISMISSED
ROBERT WAYNE DAVIS;)	
ALEXANDER SMITH; PATRICK)	
FOSTEY; IND-COMM)	
MANAGEMENT, INC.; IND-)	
COMM, INC.; NATIONAL IND-)	
COMM, LLC; NATIONAL)	
MORTGAGE REAL ESTATE)	
CORP.; and HAWAIIAN)	
PROPERTIES, LTD.,)	
)	
Defendants.)	
_____)	

FINDING AND RECOMMENDATION THAT PLAINTIFF'S CASE BE
DISMISSED

Plaintiff Karla Leary ("Plaintiff") filed this action on May 10, 2006, against Defendants Robert Wayne Davis, Alexander Smith, Patrick Fostey, Ind-Comm Management, Inc., Ind-Comm, Inc., National Ind-Comm, LLC, National Mortgage Real Estate Corp., and Hawaiian Properties, Ltd. ("Defendants").

Pursuant to Fed. R. Civ. P. 4(m), a plaintiff must serve a defendant within 120 days after filing the complaint, or within any additional period of time

authorized by the Court. Plaintiff did not file an executed return of service or any other proof that any defendant was served within 120 days.

On October 2, 2006, the Court filed an order requiring Plaintiff to serve her complaint on or before November 30, 2006. The Court advised Plaintiff that failure to serve the complaint by November 30, 2006 would result in dismissal of the action.

Plaintiff has failed to comply with the Court's order of October 2, 2006, and the Court recommends that the case be dismissed.

A district court must weigh five factors to determine whether to dismiss a case for failure to comply with a court order: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions. Bautista v. Los Angeles County, 216 F. 3d 837, 841 (9th Cir. 2000).

Balancing the five factors in this case, the Court finds that dismissal of the Complaint to be an appropriate sanction in this case.

Consequently, the Court FINDS and RECOMMENDS that this action be DISMISSED.

IT IS SO FOUND AND RECOMMENDED.



/s/ Barry M. Kurren
United States Magistrate Judge
Dated: January 18, 2007

Leary v. Davis; FINDING AND RECOMMENDATION THAT PLAINTIFF'S
CASE BE DISMISSED; Cv. No. 06-00256 HG-BMK.